

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

STATUTORY REVIEW OF THE SYSTEM
FOR REGULATING RATES AND CLASSES
FOR MARKET DOMINANT PRODUCTS

Docket No. RM2017-3

**RESPONSE TO THE PUBLIC REPRESENTATIVE'S
MOTION FOR RECONSIDERATION**
(January 12, 2018)

In Order No. 4257, the Commission found that the current system for regulating market-dominant rates and classes failed to achieve the objectives enumerated in 39 U.S.C. § 3622(b)(1), (3), (5), and (8) (taking into account the factors in 39 U.S.C. § 3622(c)).¹ For certain of those objectives, the Commission found that the system could achieve one aspect of the objective while still failing to achieve the objective as a whole. For example, the Commission found that the current system failed to achieve “medium-term financial stability” for purposes of objective 5 because the Postal Service had a net loss in every year since the PAEA’s passage.² It also found that the Postal Service’s retained earnings plunged from a positive level in FY2006 to an unprecedented \$59 billion deficit by FY2016, which the Commission characterized as not achieving “long-term financial stability.”³ At the same time, the Commission found that the Postal Service maintained enough cash on hand each year to fund day-to-day operations without service interruptions, which the Commission equated with

¹ See *generally* Order No. 4257, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, PRC Docket No. RM2017-3 (Dec. 1, 2017).

² *Id.* at 165-69.

³ *Id.* at 169-71.

achievement of “short-term financial stability.”⁴ This latter finding, however, did not disturb the Commission’s ultimate conclusion that the system failed to “assure adequate revenues, including retained earnings, to maintain financial stability.”⁵

In his motion for reconsideration of Order No. 4257, the Public Representative does not challenge the Commission’s “medium-term” and “long-term financial stability” findings or its ultimate conclusion that the current system failed to achieve objective 5. Instead, the Public Representative challenges the Commission’s analytical approach to “short-term financial stability,” arguing that the appropriate metric should be “operating profit” in the generally accepted accounting sense.⁶ This is not enough to warrant reconsideration of Order No. 4257. Even if granted fully on the Public Representative’s terms, reconsideration would not change the Commission’s conclusion. Nor does the Public Representative introduce a new concept for the current remedial phase of this proceeding. Rather, the Public Representative acknowledges that operating profit (in the generally accepted accounting sense) is practically identical to net income,⁷ and the Commission has already identified net income as a problem that it intends to address.⁸

This is not to say that the Public Representative’s arguments lack merit or should be disregarded. As the Public Representative notes, there are valid reasons to conclude that firms that can fund operations only by withholding mandatory payments to

⁴ *Id.* at 159-65.

⁵ 39 U.S.C. § 3622(b)(5); *accord* Order No. 4257 at 178.

⁶ See Motion by the Public Representative for Reconsideration, PRC Docket No. RM2017-3 (Jan. 5, 2018) [hereinafter “PR Motion”], at 4-5.

⁷ See *id.* at 4-5 & fn.8.

⁸ Order No. 4258, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, PRC Docket No. RM2017-3 (Dec. 1, 2017), at 40.

creditors and deferring critical capital investments do not exhibit “short-term financial stability.”⁹ This point, like others that could be made about substantive aspects of Order No. 4257, does not affect the outcome in Order No. 4257, but it could be relevant to the ultimate remedy proposed in Order No. 4258: that is, what alternative system should be implemented to correct the failings of the current system. Indeed, the Public Representative himself acknowledges that the motion is focused on the framing of an appropriate remedy, rather than altering the overall conclusion of Order No. 4257.¹⁰

Hence, it would be logical for the Commission to invite the Public Representative and other parties to use their March 1 comments to discuss aspects of Order No. 4257 that may influence the remedy. This would facilitate a streamlined discussion and conserve limited Commission and party resources; concurrent rulemaking and reconsideration proceedings would not. Hence, without any prejudice to the merits of the Public Representative's contentions, the Commission should direct that the comment period be the forum for considering criticisms of Order No. 4257 that implicate the design of the alternative system, and the Commission should remain open to considering such criticisms as it crafts an appropriate remedy.

⁹ See PR Motion at 6-7.

¹⁰ *Id.* at 3.

Respectfully submitted,

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